

trainers, and textbook writers and curriculum developers in the field of teaching English as a foreign language (TEFL) at the secondary level. These programs should focus on incorporating American studies cultural content into secondary-level English teaching courses, and the use of teaching materials with a U.S. emphasis.

One of the five study programs will be designed for textbook writers, teacher trainers and curriculum developers involved in secondary-level social science education, including history and geography. Special emphasis should be placed on American studies source materials and their use in the writing of history, geography, and social studies textbooks and curricula. Programming on the American political process, notably the role of the U.S. Constitution (especially the Bill of Rights), should be included.

The remaining program will be designed for university professors involved in teaching courses in interdisciplinary American studies, American history, or American political institutions. This project should offer "advanced American studies programming," and assume that the participants are already knowledgeable about basic American history and institutions. A comparative perspective would be appropriate for this group, as would a greater discussion of historical and contemporary issues in American society, government, and law.

Project Guidelines

Each of the five programs will begin with an initial program orientation and introductory lectures will be held in Washington, DC. Each program will include two main academic modules, each approximately seven days in length. The first module will be an intensive, graduate-level seminar at a major university, covering a number of interdisciplinary themes related to historical and contemporary American culture, society, and institutions. Current topics and issues should be included in the seminar. The second module will take place at a different university, institution, or other location appropriate

to the specific theme of the program, preferably situated in another region of the country than that of the first module. This section of the project should provide additional American studies programming, exploring themes and issues which were not covered in the first academic module. The two academic modules are to be followed by at least one other travel segment to a different section of the U.S., in order to further expose the participants to American regionalism and cultural diversity. The programs will end in Washington, DC, with a briefing at USIA headquarters and a final project evaluation session.

Proposed Budget

Proposals must include a comprehensive line item budget, for which specific details will be supplied in the application packet available for the Division for the Study of the U.S.

Grants awarded to eligible organizations with less than four years experience in conducting international exchange programs will be limited to \$60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of the General Counsel, the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

(1) Quality and imaginative design of the project;

(2) Quality, rigor, and appropriateness of proposal with regard to stated objectives of the project;

(3) Clear evidence of the ability to deliver a substantive and high-quality American studies program; experience with foreign educators is desirable;

(4) Provision for a useful evaluation at the conclusion of the program;

(5) Evidence of strong administrative and managerial capabilities for academic exchange programs, with specific discussion of how administrative and logistical arrangements will be undertaken;

(6) The experience of professionals and staff assigned to the program;

(7) The availability of resources for the Washington-based orientation and evaluation segments, and for the two university-based academic seminar components;

(8) A well-thoughtout and comprehensive cultural tour to complement the academic segments;

(9) Cost-effectiveness.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about December 15, 1991. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 23, 1991.

William P. Glade,
Associate Director, Bureau of Educational
and Cultural Affairs.

[FR Doc. 91-21998 Filed 9-11-91; 8:45am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 177

Thursday, September 12, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 44125 Friday, September 6, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern time) Tuesday, September 17, 1991.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

CHANGE IN THE MEETING: The meeting scheduled for September 17, 1991 has been postponed until Tuesday, October 1, 1991 at 2:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-7100.

Dated: September 10, 1991.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 91-22076 Filed 9-10-91; 2:19 pm]

BILLING CODE 6750-06-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 17, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

MATTER TO BE CONSIDERED: Analysis of Comments on Association of State Democratic Chairs' Rulemaking Petition.

DATE AND TIME: Tuesday, September 17, 1991, To Be Convened After the Open Meeting.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance matters pursuant to 2 U.S.C.

§ 437g.

Audits conducted pursuant to 2 U.S.C. § 437g.

§ 438(b), and Title 28, U.S.C.

Matters concerning participation in civil

actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 19, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC (Ninth Floor).

STATUS: This meeting Will Be Open to the Public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes

Gephardt for President Committee—Request

for Oral Presentation

Advisory Opinion 1991-27: Mr. Lance Olson

on behalf of the California Democratic

Party

Administrative Matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Press Officer,

Telephone: (202) 376-3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-22111 Filed 9-10-91; 2:27 pm]

BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DATE AND TIME: 10:00 a.m., Wednesday, September 18, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 10, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-22113 Filed 9-10-91; 3:11 p.m.]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, September 17, 1991.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5299C Safety Recommendations Program Additions: "Most Wanted" List.

5489A Aviation Accident Summary Report: Mid-Air Collision Involving Lycoming Air Service Piper Aerostar and Sun Company Aviation Department Bell 412, Merion, Pennsylvania, April 4, 1991.

5381A Marine Accident Report: Collision of Greek Tankship SHINOUSSA with U.S. Towboat CHANDY N and Tow, Galveston Bay, Texas, July 28, 1990.

NEWS MEDIA CONTACT: Telephone (202) 382-6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: September 6, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91-22080 Filed 9-10-91; 2:19 pm]

BILLING CODE 7533-01-M

Federal Register

Thursday
September 12, 1991

Part II

Department of the Interior

Bureau of Indian Affairs

48 CFR Parts BIA 1401 to 1499
Acquisition Regulations; Buy Indian Act;
Procedures for Contracting; Proposed
Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

48 CFR Parts BIA 1401 to 1499

Acquisition Regulations; Buy Indian Act; Procedures for Contracting

RIN 1076-AC50.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is publishing a proposed rule to govern the implementation of section 23 of the Act of June 25, 1910, 25 U.S.C. 47 (the "Buy Indian Act"), as amended. This proposed rule supports the policy and describes the procedures of the Bureau of Indian Affairs in its commercial acquisition relationships with self-certified eligible Indian economic enterprises.

DATES: Comments must be received on or before January 10, 1992.

ADDRESSES: Written comments should be directed to the Department of the Interior, Bureau of Indian Affairs, Division of Contracting and Grants Administration, MS-334A-SIB, 1849 C Street, NW., Washington, DC 20240, (202) 208-2825.

FOR FURTHER INFORMATION CONTACT: Kimberly Romine or Frances Meckel, Department of the Interior, Bureau of Indian Affairs, Division of Contracting and Grants Administration, MS-334A-SIB, 1849 C Street, NW., Washington, DC 20240, (202) 208-2825.

SUPPLEMENTARY INFORMATION: This proposed rule is published in the exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual, Chapter 8. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301. The authorizing statute is section 23 of the Act of June 25, 1910 (25 U.S.C. 47), as amended.

The Bureau of Indian Affairs published proposed rules in the *Federal Register* on three prior occasions in 47 FR 44678, 49 FR 45187, and 53 FR 24738. Public comments received by the Bureau of Indian Affairs were reviewed, addressed in succeeding editions, and incorporated herein, where applicable.

The Assistant Secretary—Indian Affairs has encouraged major initiatives for economic development and employment of Indian persons, such as reducing the percentage of Indian ownership of Indian economic enterprises from 100% to 51%. In support

of these initiatives, the previously proposed rules were rewritten and are published herein as proposed rules.

This proposed rule formalizes an administrative procedure for all Bureau acquisition activities/locations to be applied uniformly for self-certified eligible Indian economic enterprises which respond in an offer to specific solicitations set-aside under the Act and this part.

The authors of this document are: Dr. Peter A. Campanelli (retired), Ms. Kimberly Romine, and Ms. Frances J. Meckel, Division of Contracting and Grants Administration, Bureau of Indian Affairs; and, Mr. William Opdyke, Acquisition and Assistance Division, Bureau of Reclamation; U.S. Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act.

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The collections of information contained in this rule of the clauses referenced in Section BIA 1480.601 regarding compliance with Section 7(b) of Pub. L. 93-638 (25 U.S.C. 452) have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084-0019. In addition, the contract office requires use of the requirements in SF-129, Solicitation Mailing List Application; and may require use of the SF-254, the Architect-Engineer and Related Services Questionnaire, and SF-255, the Architect-Engineer and Related Services Questionnaire for Specific Project. These referenced items for collections of information have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned the OMB clearance numbers 9000-0002, 9000-0004, and 9000-0005 respectively. The information collection requirements contained in 48 CFR Part 1452.280-2, 1452.280-4 and BIA 1480.201 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Indian set-aside program awards under the Buy Indian Act (and the proposed rule) are commercial contracts. Unlike Bureau awards to

tribal organizations under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), commercial contracts are governed by the Federal Acquisition Regulation (FAR) and relevant Departmental and BIA directives.

Title 48, Code of Federal Regulations, encompasses all Federal commercial acquisitions in its parts 1-53. These parts apply to all commercial contracts, and include Buy Indian Act awards. They are mandatory for the Bureau and cannot be excepted by any Federal official.

A total of twenty-five written comments were received from external sources regarding the proposed rule. Initially, we will address some of the public comments that touched on Federal acquisition regulations rather than on Bureau policy. Some comments expressed opposition to the general topic of the percentages of subcontracting expressed in the language in proposed section BIA 1452.280-3 and in BIA 1480.602. Some respondents believed the percentages stated were too high for Indian economic enterprises. The percentages listed in the proposed rule are required for inclusion by FAR 52.219-14 and apply to all commercial contracts.

Section 7(b) of Public Law 93-638, as implemented by Department of the Interior Acquisition Regulation 1452.204-71, applies the Indian preference requirement for employment and subcontracting opportunities under contracts for the benefit of Indians, or contracts made pursuant to statutes authorizing contracts with Indians. This principle is reiterated in this rule in BIA 1480.503(c); BIA 1452.280-2(c) (2), (3), and (4); BIA 1480.601; and, in BIA 1480.701(c).

Several comments stated concerns regarding a possible inconsistency in the proposed rule regarding small business set-asides; specifically, the relationship of the Act with regard to eligible Indian enterprises and the Order of Precedence in appendix A and the requirements in the proposed section BIA 1480.503(b). The Bureau must adhere to the Small Business Act Requirements, as it governs small purchases, and at the same time continue its policy of utilizing the Buy Indian Act. To this end, it has attempted to join the two requirements in the proposed section BIA 1480.503(b). When the Bureau Contracting Officer cannot make an advance determination of a potential award as an Indian small business set-aside under the Buy Indian Act, the Bureau is required to follow the order of preference in the Federal Acquisition Regulation (see FAR 8.001).

If an award is not or cannot be made to an eligible Indian firm that is responsible, responsive and is price reasonable to the Bureau solicitation, the set-aside notice is cancelled and other small business sources are sought as defined in Attachment 1. However, the Bureau may not move from a Buy Indian Act set-aside to full and open competition without first giving consideration to other authorized procurement set-aside programs.

Several comments were received regarding the language in proposed section BIA 1480.504-1(b)(14) wherein the Bureau Contracting Officer would provide written notice to the Indian governing body when a proposed set-aside involved services to be performed in whole or in part on land of that governing body. The objection focused on the Bureau notifying the involved tribe at the same time that the synopsis notice is published in the Commerce Business Daily (CBD). If a Tribal resolution was passed opposing the set-aside intention, such Bureau action could require much unnecessary effort and expense on the part of a non-tribal Indian business firm in preparing a bid or proposal. This time and expense could be eliminated if the Indian business firms knew of the tribe's possible resolution of nonsupport for the set-aside approach. The Bureau believes it is required by Public Law 93-638, as amended by Public Law 100-472, to advise a tribe of any work that will be performed within the boundaries of its tribal lands. If the tribe does not (1) give a negative response to the notice or (2) advise the Bureau of its intent to contract for the program within 15 calendar days from the date of publication in the Commerce Business Daily notice of the solicitation, the Bureau will then proceed with the solicitation. The Bureau believes this change addresses the concern expressed by commentators and honors the spirit of Public Law 93-638 as amended by Public Law 100-472.

A concern was expressed on the general topic of roads construction in relationship to the Indian set-aside program under the Buy Indian Act. The language in proposed section BIA 1480.401(b) implements the decision of the Supreme Court in *Andrus v. Glover*, 446 U.S. 608, 27 May 1980, which upheld an Oklahoma Court's decision that the Bureau could not use the Buy Indian Act to contract for construction. This prohibition was partially removed in 1983 with the passage of Public Law 97-424 (the Surface Transportation Act of 1983). However, the injunction which was placed on the Bureau's authority to

use the Buy Indian Act for road construction services was not removed for the State of Oklahoma and any other type of general construction in any State. Therefore, all such "restricted" construction is outside the scope of the Buy Indian Act set-aside program and is prohibited by law.

One comment expressed opposition to the proposed rule definition for *Indian* (BIA 1452.280-4 and 1480.201), and stated an opinion that the term in the rule should incorporate a quarter-degree blood requirement as a requirement for being an enrolled tribal member. The commentor appears to have mixed two distinct issues. Tribes may set a blood quantum for membership, and many have. In some instances tribes, and the Bureau, have used the degree of Indian or tribal blood as one factor in establishing the relative priorities among eligible participants. However, the Bureau cannot impose a blood quantum requirement for initial eligibility for its programs unless the legislation authorizing the program allows it. The Bureau programs are available to all tribal members regardless of blood degree. The Bureau defers to tribal governments in the setting of the tribe's own standards for enrollment and membership so long as the standards reflect a meaningful bilateral, political relationship between the tribe and its members and they do not reflect a purely racial relationship.

Another comment expressed disagreement with the proposed rule definition of *Indian land* (BIA 1480.201), citing considering for the term *Indian country*, as found in 18 U.S.C. 1151. The purpose of defining the term *Indian land* is to assist in determining when the Indian preference clauses set forth in the Department of the Interior Acquisition Regulation (DIAR) are required to be inserted into a Buy Indian Act set-aside contract under section BIA 1480.601(a) of the rule. In contrast, the term *Indian country* defines Federal criminal jurisdiction in Indian areas and contains references to *dependent Indian communities* and to *Indian allotments* which are inappropriate to determine the applicability of Indian preference clauses. Moreover, several comments were directed to the language in proposed section BIA 1480.401(b) with regard to construction. The Bureau has changed the language to comply with FAR 6.1 and 6.2, as applicable to set-aside awards.

The language in proposed section BIA 1480.902 deals with time-frames regarding Bureau receipt of a protest from an interested party. Some comments stated that the deadlines

were too short to permit lodging a protest. The Bureau disagrees with the idea and has used the time-frames for small business set-aside awards protests, referenced in FAR 19.302.

The following statements seek to explain Bureau policy determinations, as expressed in the rule, separate from those Federal requirements outlined above in addressing some of the comments.

Three related items contained in the proposed rule were commented on: (1) Allowing more parties to protest a proposed or actual award in proposed section BIA 1480.901; (2) expanding the definition of *interested parties* (BIA 1480.201) who may participate in a protest; and (3) lengthening the time available to interested parties to lodge a protest (BIA 1480.902(c) (1) and (2)).

Some comments recommended that the term *interested party* (which could protest an award) be expanded to include Indian tribes, Tribal Employment Rights Offices (TERO's), and Indian national professional/technical groups. The Bureau does not agree. The term *interested party* involves only an actual or prospective offeror to a Bureau solicitation under the Act whose direct economic interest would be affected or impacted by the award. The Bureau believes, with its proposed self-certification process for self-declared eligibility, that there will be protests lodged to question eligibility as an Indian economic enterprise. In fairness to those offerors who submitted bids/proposals in response to a Bureau solicitation, only their direct economic interests are or would be affected. Thus, it is left to these offerors to lodge a protest. In addition, any interested party (as cited in FAR part 33) may file a protest alleging violations of a procurement statute or regulation.

The time available to lodge a protest is proposed in the rule as "a protest must be received by the contracting officer not later than 10 days after the basis of protest is known or should have been known, whichever is earlier." The Bureau believes the proposed time period to be reasonable for an interested party to lodge a written protest to the Contracting Officer, thereby conforming to the general principles reflected in FAR subpart 33.1. Since this protest would constitute a possible first-step procedure under FAR 33.1, the Bureau is required to: (1) Promptly notify all offerors (successful as well as unsuccessful) within the prescribed time-frame (for sealed bids and competitive negotiations) so that possible protests may be timely lodged with the Bureau; and (2) seek resolution

within the prescribed time-frame of the protest that is lodged before the interested party pursues the protest with the General Accounting Office (GAO) or General Services Board of Contract Appeals (GSBCA). In keeping with the procedures outlined in FAR 33.1 for filing protests, the rule language is considered appropriate.

Some comments expressed concern with the language in proposed section BIA 1480.402, providing for the Assistant Secretary and the Deputy Commissioner of Indian Affairs and the Contracting Officer, to authorize deviations from the use of the Buy Indian Act. The authority is reserved to the Assistant Secretary and to the Deputy Commissioner of Indian Affairs to exercise an exception to use of the Act when they consider doing so to be in the best interests of the Government. This management option must remain vested with the head of the agency. Also, for the reasons stated in proposed section BIA 1480.402 (b) and (c), the Contracting Officer must retain the authority to consider and authorize an exception to the use of the set-aside program under the Act when the pre-award process does not yield a responsible, responsive Indian offeror to provided supplies or services at a reasonable price. In addition, the Contracting Officer must also have the authority to consider a tribal resolution that requests a waiver of the Act. However, all deviations require the Contracting Officer to prepare a written Determination and Findings before the exception is exercised; and, except as stated in BIA 1480.402(b), it must be submitted to the Deputy Commissioner of Indian Affairs for review and approval/disapproval. It is believed that such higher-level review before the fact of the proposed exception will maintain an effective internal control system of oversight.

A number of comments objected formalizing by regulation the existing Bureau policy of having a minimum 51 percent Indian ownership of the Indian economic enterprise for participation in the set-aside awards under the Buy Indian Act. Prior to January, 1988, Bureau policy required participant firms to be 100 percent Indian-owned and controlled. The Bureau changed its policy in order to facilitate and expand economic development on Indian reservations by increasing the opportunities for Indian businesses to obtain operating capital, which was often difficult, if not impossible to do under the "100 percent ownership" policy. The Bureau believes this "minimum 51 percent ownership" requirement is a much more realistic

requirement that can, with sufficient regulatory safeguards, protect the integrity of the majority Indian owner of the joint economic enterprise.

Corresponding with the change in Bureau policy from "100 percent ownership" to "a minimum of 51 percent ownership" of an Indian firm, the Bureau will no longer certify "Indian" ownership of a participating firm. Rather, a self-declaration approach will be used whereby an economic enterprise declares in writing in response to a specific Bureau set-aside solicitation that it meets the requirements of being "eligible," an "Indian," and an "Indian economic enterprise" for purposes of participation. The Contracting Officer or an interested party, as defined in proposed section BIA 1480.201 in the rule, may raise a protest to the representation declaration of an offeror. The protest will be handled by the Contracting Officer under proposed subpart BIA 1480.9 of the rule. The Bureau believes this approach will be more effective than a Bureau certification system to ensure the eligibility requirements of the Buy Indian Act.

Some comments expressed concern with the rules use of the term "daily business management"; and, omission of the phrase "owned-and-controlled" with respect to Indian person(s) and Indian economic enterprises. It is the position of the Bureau that ownership implies setting the policies and directions for an enterprise; and, that "ownership" thereby is synonymous with *control* of the enterprise. The Bureau believes that the *business management* term further defines the "ownership" principle, wherein the former implies the policy-making, budgeting, controlling, directing, coordinating, organizing, and planning functions for an enterprise. The words *ownership* and *managed* are viewed in the broad sense relative to *controlling* an enterprise, and are considered sufficient in this rule.

In addition to comments on the previously proposed regulation, the Secretary also wishes to address the concerns about violations of Indian preference contracting as cited in the Final Report of the Special Committee on Investigations, Senate Select Committee on Indian Affairs, November, 1989. In this report, the committee specifically identified two problems: (1) That self-declaration of Indian ownership, notwithstanding the penalties associated with making false statements in response to a contract solicitation, may not act as deterrent, and (2) that the 51 percent minimum "ownership" requirement does not

ensure the equitable return of profits to those Indian co-owners. In any cases, they are only acting as legal but not true partners in the business ventures.

Since early 1988, the Bureau has followed the 51 percent Indian ownership requirement and the self-certification policies in implementing the Indian preference contracting program. At this time, the Secretary is proposing this rule to provide a regulatory basis for these policies. However, recognizing that there are significant concerns about fraudulent representation and abuse of Indian preference contracting program, the Secretary is specifically inviting public comment on the issues of self-certification and minimum 51 percent ownership. The Secretary is also inviting discussion on alternative approaches to implementing this program and how to improve the integrity of Indian preference contracting programs overall.

In addition to the above comments, several editorial changes were made to the text to clarify the Bureau's intent regarding a specific provision. These editorial changes are considered minor and do not affect the substance or intent of the rule.

List of Subjects in 48 CFR Parts BIA 1401 to BIA 1499

Indian economic enterprises, Government procurement, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, parts 1401 to 1499 of title 48, chapter 14 of the Code of Federal Regulations are amended as set forth below.

1. Chapter 14 is amended by adding a new appendix A as follows:

APPENDIX A—BUREAU OF INDIAN AFFAIRS

SUBCHAPTER A—GENERAL

BIA Part

1401 Bureau of Indian Affairs Acquisition Regulation System.

1402 Definition of words and terms.

SUBCHAPTER B—G—[RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

1452 Solicitation Provisions and Contract Clauses.

SUBCHAPTER I—BUREAU OF INDIAN AFFAIRS SUPPLEMENTATION

1480 Acquisitions under the Buy Indian Act.

SUBCHAPTER A—GENERAL**PART BIA 1401—BUREAU OF INDIAN AFFAIRS ACQUISITION REGULATION SYSTEM****Subpart BIA 1401.1—Purpose, Authority, Applicability, Issuance****Sec.**

- BIA 1401.101 Purpose.
 BIA 1401.102 Authority.
 BIA 1401.103 Applicability.
 BIA 1401.104 Issuance.
 BIA 1401.104-1 Publication and code arrangement.
 BIA 1401.104-2 Arrangement of regulations.
 BIA 1401.104-3 Copies.
 BIA 1401.105 OMB approval under the Paperwork Reduction Act.

Subpart BIA 1401.2—Administration

- BIA 1401.201 Maintenance of the BIAAR.

Subpart 1401.4—Deviations

- BIA 1401.470 Procedure.

Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 253(c)(5), and 5 U.S.C. 301.

Subpart BIA 1401.1—Purpose, Authority, Applicability, Issuance**BIA 1401.101 Purpose.**

(a) The Bureau of Indian Affairs Acquisition Regulation (BIAAR) is issued to establish uniform acquisition policies and procedures throughout the BIA which are necessary to implement or supplement the Federal Acquisition Regulation (FAR) and the Department of the Interior Acquisition Regulation (DIAR).

(b) BIAAR issuances do not reiterate material published in the FAR or the DIAR.

(c) Implementing material in the BIAAR expands upon or indicates the manner in which the Bureau of Indian Affairs will comply with related material in the FAR and the DIAR. Supplementing material addresses subjects which have no counterpart in the FAR or the DIAR. The absence of sections or subsections in BIAAR means no further explanation or qualification is considered necessary for implementation within the Bureau of Indian Affairs. Therefore, in order to assure that consideration is given to all acquisition policies and procedures, it is necessary to consult applicable sections of the FAR and DIAR as well as the BIAAR.

BIA 1401.102 Authority.

The DIAR authorizes supplementation or implementation of the FAR and DIAR in accordance with established procedures (see DIAR 1401.302) to enable the publication of essential acquisition instructions, policies and procedures that do not conflict with,

supersede or duplicate those prescribed by the FAR and the DIAR. Regulations issued under this part shall be codified in 48 CFR chapter 14, appendix A, part BIA 1480 in accordance with DIAR 1401.303 and shall conform to the requirements of FAR subpart 1.3 and DIAR subpart 1401.3. The rulemaking notice for this BIAAR shall be submitted in writing to the Director, Office of Acquisition and Property Management for review and approval by the Assistant Secretary—Policy, Management and Budget in accordance with 401 DM 1.4C(3), before signature by the Assistant Secretary—Indian Affairs.

BIA 1401.103 Applicability.

The FAR, DIAR and BIAAR issuances apply to all acquisitions made by Bureau of Indian Affairs procurement activities as defined in FAR 1.103 except those entered into pursuant to the Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended by Public Law 100-472, unless the FAR, DIAR or BIAAR are specifically incorporated into the regulations implementing the Indian Self-Determination and Education Assistance Act.

BIA 1401.104 Issuance.**BIA 1401.104-1 Publication and code arrangement.**

(a) The BIAAR is published in the form indicated in FAR 1.104-1.

(b) BIAAR issuances will be published on salmon pages in looseleaf form for insertion into the DIAR.

BIA 1401.104-2 Arrangement of regulations.

(a) *General.* The BIAAR conforms to the FAR and DIAR with respect to divisional arrangements, i.e., subchapters, parts, subparts, sections, subsections and paragraphs.

(b) *References and citations.* (1) This regulation shall be referred to as the Bureau of Indian Affairs Acquisition Regulation (BIAAR), appendix A to the Department of the Interior Acquisition Regulation. Any reference shall be cited as BIA followed by the appropriate number.

(2) Citations of authority shall be incorporated where necessary. All FAR reference numbers shall be preceded by "FAR." References to the DIAR shall be preceded by "DIAR."

BIA 1401.104-3 Copies.

Copies of the BIAAR in Federal Register form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

BIA 1401.105 OMB approval under the Paperwork Reduction Act.

The BIAAR information collection requirement contained in sections 48 CFR 1452.280-2, BIA 1452.280-4 and BIA 1480-201 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Subpart BIA 1401.2—Administration**BIA 1401.201 Maintenance of the BIAAR.**

The BIAAR is maintained by the Division of Contracting and Grants Administration, Office of Administration, Bureau of Indian Affairs. The Division is responsible for developing and preparing material to be included in the BIAAR.

Subpart BIA 1401.4—Deviations**BIA 1401.470 Procedure.**

(a) Requests for deviation(s) from the FAR or DIAR shall be submitted in writing to the Director, Office of Acquisition and Property Management, and approval and/or further processing as may be required in accordance with DIAR subpart 1401.4. Requests for deviation(s) from any BIAAR issuance shall be submitted in writing to the Bureau Central Office for approval and/or further processing as may be required. Requests for deviation(s) will only be considered if they have been submitted by a cognizant contracting officer. All requests for deviation(s) must be submitted prior to issuance of the solicitation for which the deviation(s) is sought and the deviation(s) must be approved prior to the issuance of the solicitation. If an exigency situation exists, verbal contact should be made with the Chief, Division of Contracting and Grants Administration. However, that official is only authorized to grant deviation(s) from the BIAAR.

(b) Requests for a deviation(s) shall provide sufficient information to permit Bureau of Indian Affairs compliance with FAR and DIAR requirements.

PART BIA 1402—DEFINITION OF WORDS AND TERMS**Subpart BIA 1402.1—Definitions****Sec.**

- BIA 1402.101 Definitions.
 Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 253 (c)(5), and 5 U.S.C. 301.

Subpart BIA 1402.1—Definitions**BIA 1402.101 Definitions.**

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the

context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion of a part.

Assistant Secretary means the Assistant Secretary-Indian Affairs, Department of the Interior, or designee.

Bureau means the Bureau of Indian Affairs, Department of the Interior.

Bureau Central Office means the Headquarters component located in Washington, DC, that serves as staff resource to the Assistant Secretary—Indian Affairs.

Head of the Contracting Activity means the Deputy Commissioner of Indian Affairs.

Chief of the Contracting Office means the senior contract specialist at a Bureau Area or Central Office.

Contracting Officer means an official designated in accordance with FAR 1.6 and DIAR 1401.6 of this title, having the authority to enter into, administer and/or terminate contracts, and make related determinations and findings or justifications and approvals.

Day means work day.

Secretary means the Secretary of the Interior.

SUBCHAPTERS B-G (RESERVED)

SUBCHAPTER H-CLAUSES AND FORMS

PART BIA 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart BIA 1452.1—Instructions for Using Provisions and Clauses

Sec.

BIA 1452.101 Scope of subpart

Subpart BIA 1452.2—Texts of Provisions and Clauses

Sec.

BIA 1452.280 Scope of subpart

BIA 1452.280-1 Notice of Indian small business economic enterprise—small purchase set-aside.

BIA 1452.280-2 Notice of Indian economic enterprise set-aside.

BIA 1452.280-3 Subcontracting limitations.

BIA 1452.280-4 Representation Declaration for eligible Indian economic enterprises.

Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 253 (c)(5), and 5 U.S.C. 301.

Subpart BIA 1452.1—Instructions for Using Provisions and Clauses

BIA 1452.101 Scope of subpart.

This subpart gives instructions for using subpart BIA Part 1452. All provisions and clauses in solicitations and contracts shall be incorporated in full text.

Subpart BIA 1452.2—Texts of Provisions and Clauses

BIA 1452.280 Scope of subpart.

This subpart sets forth the texts of all BIAAR provisions and clauses (see 1452.101) and for each provision and clause, gives (a) a cross-reference to the location in the BIAAR that prescribes its use, and (b) directions for including it in solicitations and/or contracts.

BIA 1452.280-1 Notice of Indian small business economic enterprise—small purchase set-aside.

As prescribed in BIA 1480.503(b)(1), and in lieu of the requirements of FAR 19.508(a), insert the following provision in each written solicitation of quotations or offers to provide supplies or services when the acquisition is subject to small purchase procedures in FAR part 13.

Notice of Indian Small Business Economic Enterprise—Small Purchase Set-Aside (Current Date)

Pursuant to the Buy Indian Act, 25 U.S.C. 47, quotations under this solicitation are solicited only from eligible Indian economic enterprises (Subpart BIA 1480.8) which also must be small business concerns. The offeror must submit a completed Representation Declaration (BIA 1452.280-4) at the time of submission of its offer to a specific solicitation as evidence that its economic enterprise is eligible to be considered for award. Any acquisition resulting from this solicitation will be from such a concern. Quotations received from enterprises that are not eligible Indian economic enterprises shall not be considered and shall be rejected.

(End of provision)

BIA 1452.280-2 Notice of Indian economic enterprise set-aside.

As prescribed in BIA 1480.504-1(b)(2), insert the following clause in solicitations and contracts involving Indian economic enterprise set-asides:

Notice of Indian Economic Enterprise Set-Aside (Current Date)

(a) Definitions. *Eligible*, as used in this clause, means that the majority owner of an Indian economic enterprise meets both the definitions of "Indian" and of "Indian economic enterprise," as set forth below.

Indian, as used in this clause, means a person who is a member of an Indian Tribe, as defined herein.

Indian Economic Enterprise, as used in this clause, means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); (2) for non-tribal ownership, has one or more of its Indian owners involved in daily business management of the economic enterprise; and (3) has the majority of its earnings accrue to such Indian person(s) if organized for profit. For not-for-profit enterprises, the majority of the board of directors (or other controlling body) must be Indian persons. These requirements must exist: when an offer is

made in response to a written solicitation; at the time of contract award; and during the full term of the contract. If a contractor no longer meets the eligibility requirements after award, the contractor shall provide immediate written notification to the contracting officer. Failure to provide immediate written notification to the contracting officer shall render the economic enterprise ineligible for future contract awards under this part; and the Bureau may consider termination for default if it is determined to be in the best interest of the government.

Indian tribe, as used in this clause, means any Indian tribe, band, nation, rancheria, pueblo, colony, Alaska Native Village, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

Self-certified, as used in this clause, means the positive statement of eligibility as an Indian economic enterprise for preferential consideration and participation for acquisitions conducted pursuant to the Buy Indian Act, 25 U.S.C. 47, in accordance with the procedures in BIA Subpart 1480.8.

(b) *General*. (1) Pursuant to the Buy Indian Act, offers are solicited only from eligible Indian economic enterprises. Therefore, the offeror must represent by written declaration at the time of submission of its offer to a specific solicitation that its economic enterprise is eligible to be considered for award. (If selected for award, the offeror shall: (i) Comply with the minimum 51 percent ownership and daily business management requirement criterion; (ii) comply with the preference requirements contained in subparagraphs (c)(3) and (c)(4) below during performance of the contract if award is made to the economic enterprise; and (iii) provide the required percentage of the work/costs with its own resources, exclusive of manufactured or leased items and/or supplies or materials produced off-site, as required in BIA 1480.602.

(2) Offers received from non-Indian economic enterprises or non-eligible Indian economic enterprises shall be rejected.

(3) Any award resulting from this solicitation will be made to an eligible Indian economic enterprise, defined in paragraph (a) above.

(c) *Required Submissions*. In response to this solicitation, the eligible Indian economic enterprise shall also provide the following:

(1) A description of the required percentage of the work/costs to be provided by the contractor over the contract term as required by the BIA 1452.208-3, Subcontracting Limitation clause;

(2) A description of the source of human resources for the work to be performed by the contractor;

(3) A description of the method(s) of recruiting and training Indian employees, indicating the extent of soliciting employment of Indian persons, as required by DIAR 1452.204-71, Indian Preference—Department of the Interior and/or, DIAR 1452.204-72, Indian Preference Program—Department of the Interior clause(s);

(4) A description of how subcontractors (if any) will be selected in compliance with the "Indian Preference—Department of the Interior" and/or "Indian Preference Program—Department of the Interior" clause(s).

(5) The names, addresses, and descriptions of work to be performed by Indian persons or economic enterprises being considered for subcontracts (if any) and the percentage of the total direct project work/costs they would be performing;

(6) Qualifications of the key personnel (if any) that will be assigned to the contract;

(7) A description of method(s) for compliance with any supplemental Tribal employment preference requirements, if contained in this solicitation; and

(8) A completed Representation Declaration (BIA 1452.280-4).

(d) *Required Assurance.* Prior to Bureau award of an Act contract, as well as upon successful and timely completion of the contract, but prior to acceptance of the work or product by the Bureau contracting officer, the contractor shall provide written assurance to the Bureau that it will, or has, complied fully with the requirements of this clause.

(e) *Non-responsive.* Failure to provide the information required by paragraphs (c) and (d) of this clause may cause the offer to be determined non-responsive and rejected.

(End of clause)

BIA 1452.280-3 Subcontracting limitations.

As prescribed in BIA 1480.602(b), insert the following clause in each written solicitation of offers and contracts to provide supplies, services, or construction authorized by BIA 1480.401(b).

Subcontracting Limitations (Current Date)

(a) *Definitions.* (1) *Subcontract*, as used in this clause, means any contract (as defined by FAR Subpart 2.1) entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes, but is not limited to, purchase orders and modifications to purchase orders.

(2) *Subcontractor*, as used in this clause, means an individual, partnership, firm, corporation or any acceptable combination thereof, or joint venture, to which a contractor subcontracts part of the work under the contract. The term shall include subcontractors in any tier who perform work on the project site.

(b) *Required Percentages of Work by the Contractor.* In performance of the contract for:

(1) Services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the contractor;

(2) Supplies (other than procurement from a regular dealer in such supplies), the contractor shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) General construction, the contractor will perform at least 15 percent of the cost of

the contract, not including the cost of materials, with its own employees; and

(4) Construction by special trade contractors, the contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees pursuant to FAR 52.219-14(d) Construction by special trade contractors.

(c) *Indian Preference.* Regardless of the contract type for services, supplies, or construction authorized by BIA 1480.401(b), the contractor agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of subcontracts under this contract in accordance with DIAR 1452.204-71, Indian Preference—Department of the Interior clause.

(d) *Cooperation.* The contractor agrees to carry out the requirements of this clause to the fullest extent and to cooperate in any study or survey conducted by the contracting officer or agents of the Bureau of Indian Affairs as may be necessary to determine the extent of the contractor's compliance with this clause.

(e) *Incorporation in Subcontracts.* The contractor agrees to incorporate the substance of this clause, including this paragraph (e), in all subcontracts for supplies, services, and construction authorized by BIA 1480.401(b) awarded under this contract.

(End of clause)

BIA 1452.280-4 Representation Declaration for eligible Indian economic enterprises.

As prescribed in BIA 1480.801(a), insert the following provision in each written solicitation of quotations or offers for supplies services, or construction authorized by BIA 1480.401(b):

Representation Declaration Buy Indian Act (25 U.S.C. 47) and 48 CFR Chapter 14 (Current Date)

I. A. *Instructions.* Offerors requesting participation under the Buy Indian Act (25 U.S.C. 47) shall prepare their Representation Declaration as prescribed therein. The declaration shall be submitted to the applicable Contracting Officer by the offeror in responding to a specific Bureau solicitation under the Act and part BIA 1480.

B. *Procedure.* 1. The Buy Indian Act and its implementing regulations authorize the Secretary of the Interior and the Bureau of Indian Affairs to contract with eligible Indian economic enterprises for the procurement of supplies and services. Before submitting this declaration, offerors are encouraged to read the regulations at Part BIA 1480. A copy is available upon request from Bureau of Indian Affairs' Contract Offices.

2. The information requested below is to be submitted only in an offer in response to a specific solicitation under the Act. The completed and signed Representation Declaration is to be returned with an offer to the Bureau Contract Office issuing the solicitation.

3. To be eligible for awards by the Bureau of Indian Affairs under the Buy Indian Act and Part BIA 1480, economic enterprises must

meet the eligibility and self-certification requirements as defined in the Act's regulations. Offerors applying for awards under the Act authority must do so only in an offer responding to a specific Bureau solicitation under the Act. Failure to provide the self-certification requirement shall cause the offer to be rejected.

C. *Definitions.—Eligible.* as used in this provision, means that the majority owner of an Indian economic enterprise (as defined herein) meets both the definitions of "Indian" and of "Indian economic enterprise" in this Declaration.

Indian, as used in this provision, means a person who is a member of an Indian Tribe, as defined herein.

Indian Economic Enterprise, as used in this provision, means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); (2) for non-tribal ownership, has one or more of its Indian owners involved in daily business management of the economic enterprise; and (3) has the majority of its earnings accrue to such Indian person(s) if organized for profit. For not-for-profit enterprises, the majority of the board of directors (or other controlling body) must be Indian persons. These requirements must exist: When an offer is made in response to a solicitation; at the time of contract award; and, during the full term of the contract. If a contractor no longer meets the eligibility requirements after award, the contractor shall provide immediate, written notification to the contracting officer. Failure to provide immediate written notification to the contracting officer shall render the economic enterprise ineligible for future contract awards under this part; and the Bureau may consider termination for default if it is determined to be in the best interest of the government.

Indian tribe, as used in this provision, means any Indian tribe, band, nation, rancheria, pueblo, colony, Alaska Native village, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

II. Representation Declaration. This Declaration is to be completed and submitted only in an offer in response to a specific Bureau of Indian Affairs solicitation issued under the Buy Indian Act. Mail or deliver offers by the required deadline to the Bureau of Indian Affairs Contract Office which issued the solicitation. Contact that Bureau Contract Office with any questions.

A. The offeror represents and certifies as part of its offer that it [] is, [] is not (check one) an eligible Indian economic enterprise.

B. I understand that any intentional false statement in this Representation Declaration, or willful misrepresentation relative thereto, is a violation of the law punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both (18 U.S.C. 1001).

C. Also, I understand that the provisions of the Civil False Claims Act (31 U.S.C. 3729-3731) establish civil liability for false claims

and provides for a civil penalty of \$2,000 per false claim and double the damages suffered by the Government.

D. I have read and understand the above statement. I certify that the information provided in this Declaration is true, accurate and complete to the best of my knowledge and belief. I am aware of the regulations for this Act as they appear in 48 CFR chapter 14, appendix A, part BIA 1480.

E. *Economic Enterprise*

Firm Name: _____

Signature

By: _____

(Typed name of majority owner/Chairman of the board)

Address of Firm, include zip code: _____

Telephone number of firm, include Area code: _____

By: _____

(Signature of majority owner/Chairman of the board)

Date: _____

SUBCHAPTER I—BUREAU OF INDIAN AFFAIRS SUPPLEMENTATION

PART BIA 1480—ACQUISITIONS UNDER THE BUY INDIAN ACT

Subpart BIA 1480.1—General

Sec.

BIA 1480.101 Scope of part.

BIA 1480.102 Buy Indian Act acquisition regulations.

BIA 1480.103 Information Collection.

Subpart BIA 1480.2—Definitions

BIA 1480.201 Definitions.

Subpart BIA 1480.3—Applicability

BIA 1480.301 Scope of part.

BIA 1480.302 Restrictions on use of the Buy Indian Act.

Subpart BIA 1480.4—Policy

BIA 1480.401 General.

BIA 1480.402 Deviations.

Subpart BIA 1480.5—Procedures

BIA 1480.501 General.

BIA 1480.502 Order of procedure for use of Government supply sources.

BIA 1480.503 Small purchases.

BIA 1480.504 Other than full and open competition.

BIA 1480.504-1 Set-asides for eligible economic enterprises.

BIA 1480.504-2 Other circumstances for use of other than full and open competition.

BIA 1480.505 Debarment and suspension.

Subpart BIA 1480.6—Contract Requirements

BIA 1480.601 Indian preference.

BIA 1480.602 Subcontracting limitations.

BIA 1480.603 Performance and payment bonds.

Subpart BIA 1480.7—Contract Administration

BIA 1480.701 Contract administration requirements.

Subpart BIA 1480.8—Representative by an Indian Economic Enterprise Offeror.

BIA 1480.801 General.

BIA 1480.802 Representation Declaration provision.

BIA 1480.803 Declaration process.

Subpart BIA 1480.9—Protests of Representation Declaration

BIA 1480.901 General.

BIA 1480.902 Receipt of protest.

BIA 1480.903 Award in the face of protest.

BIA 1480.904 Protest not timely.

Attachment 1 Set-Aside Program Order of Precedence.

Attachment 2 Justification for Use of Other than Full and Open Competition in Acquisition of Supplies and Services from Indian Industry.

Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 253(c)(5), and 5 U.S.C. 301.

Subpart BIA 1480.1—General

BIA 1480.101 Scope of part.

This part prescribes policies and procedures for the commercial acquisition of supplies and services from self-certified eligible Indian economic enterprises pursuant to the Buy Indian Act, 25 U.S.C. 47, and this part. Acquisitions conducted under this part shall be subject to all applicable requirements of the FAR and DIAR, as well as internal policies, procedures or instructions issued by the Bureau of Indian Affairs. The provisions of the FAR shall govern in all instances where there may be a conflict or discrepancy.

BIA 1480.102 Buy Indian Act acquisition regulations.

(a) Acquisition regulations under this part are under the Department of the Interior Acquisition Regulations (DIAR) System and are issued in order to supplement Federal Acquisition Regulation (FAR) and DIAR requirements to satisfy the specific and unique needs for the Bureau of Indian Affairs in the implementation of the Buy Indian Act.

(b) Regulations issued under this part shall be codified in 48 CFR chapter 14, appendix A, part BIA 1480 in accordance with DIAR 1401.303 and shall conform to the requirements of FAR subpart 1.3 and DIAR subpart 1401.3.

(c) Regulations under this part are issued pursuant to the authority of the Secretary of the Interior under 5 U.S.C. 301. This authority has been redelegated to the Assistant Secretary—Indian Affairs under part 209, chapter 8, of the Departmental Manual (209 DM 8).

(d) Regulations issued under this part are under the direct oversight and control of the Director, Office of Administration, Bureau of Indian Affairs, Department of the Interior,

Washington, DC 20240, which is responsible for their review, issuance, implementation, and oversight.

BIA 1480.103 Information Collection.

(a) The collection of information contained in Section BIA 1480.601 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084-0019. In addition, the contract office requires use of the requirements in SF-129, Solicitation Mailing List Application; and may require use of the SF-254, the Architect-Engineer and Related Services Questionnaire, and SF-255, the Architect-Engineer and Related Services Questionnaire for Specific Project. These referenced items for collections of information have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned the clearance numbers 9000-0002, 9000-0004, and 9000-0005 respectively.

The BIAAR information collection requirements contained in sections 48 CFR 1452.280-2, 1452.280-4, and BIA 1480-201 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Subpart BIA 1480.2—Definitions

BIA 1480.201 Definitions.

The following words and terms are used throughout this part as defined below, unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed in a particular subpart or portion of a subpart.

Bureau Central Office means the Office of Administration, Division of Contracting and Grants Administration, Bureau of Indian Affairs, Washington, DC.

Buy Indian Act means section 23 of the Act of June 25, 1910 (25 U.S.C. 47), which also is referred to in this part as "the Act."

Buy Indian Contract means any Bureau acquisition action (by contract, purchase order, delivery order, or modification) for the products of Indian industry and labor from a self-certified eligible Indian economic enterprise pursuant to the authority of the Act and this part, except for the construction limitations stated in BIA 1480.401(b).

Dealer (regular) or Manufacturer means an Indian person who owns, operates or maintains a store, warehouse, factory or other establishment which meets the conditions in FAR 22.601.

Eligible means that the majority owner of an Indian economic enterprise

(as defined herein) meets both the definitions of "Indian" and of "Indian economic enterprise" in this part.

Fair market means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost, as determined pursuant to FAR 19.202-6(a).

Indian means a person who is a member of an Indian Tribe, as defined herein.

Indian Economic Enterprise means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); (2) for non-tribal ownership, has one or more of its Indian owners involved in daily-business management of the economic enterprise; and (3) has the majority of its earnings accrue to such Indian person(s) if organized for profit. For not-for-profit enterprises, the majority of the board of directors (or other controlling body) must be Indian persons. These requirements must exist: when an offer is made in response to a written solicitation; at the time of contract award; and, during the full term of the contract. If a contractor no longer meets the eligibility requirements after award, the contractor shall provide immediate, written notification to the contracting officer. Failure to provide immediate written notification to the contracting officer shall render the economic enterprise ineligible for future contract awards under this Part; and, the Bureau may consider termination for default if it is determined to be in the best interest of the government.

Indian land means land over which an Indian tribe is recognized by the United States as having governmental jurisdiction and land owned by a Native corporation established under the Alaska Native Claims Settlement Act of 1971, so long as the corporation qualifies as an Indian economic enterprise, as defined herein. In the State of Oklahoma, or where there has been a final judicial determination that a reservation has been disestablished or diminished, the term means that area of land constituting the former reservation of the tribe as defined by the Secretary.

Indian tribe means any Indian tribe, band, nation, rancheria, pueblo, colony, Alaska Native village, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

Interested party means an Indian economic enterprise which is an actual or prospective offeror whose direct economic interest would be affected by

the proposed or actual Bureau award of a particular contract set-aside under the Act.

Products of Indian industry and labor means any products (including, but not limited to printing, notwithstanding any other law), goods, supplies or services that can be provided by an eligible Indian economic enterprise that either produces them with its own labor force, skills, or efforts, or is a regular dealer in such goods or services.

Protest of representation means an accurate, complete and timely written objection by an interested party to a proposed or actual Bureau award to an eligible Indian economic enterprise of a contract set-aside under the Act.

Self-Certified means the positive statement of eligibility as an Indian economic enterprise for preferential consideration and participation for acquisitions conducted pursuant to the Buy Indian Act, 25 U.S.C. 47, in accordance with the provisions in BIA subpart 1480.8.

Small Purchase means an acquisition of supplies or services pursuant to procedures in FAR part 13.

Tribal Governing Body means the federally recognized entity empowered to exercise the governmental authority of a Tribe, as the latter is defined herein.

Work means the level of work effort by the prime contractor based on total direct project costs.

Subpart BIA 1480.3—Applicability

BIA 1480.301 Scope of part.

Except as provided in BIA 1480.401(b), this part is applicable to acquisitions (including small purchases) made by the Bureau of Indian Affairs pursuant to 25 U.S.C. 47 and those made by any other Bureau or Office of the Department of the Interior which is delegated the authority to make such acquisitions pursuant to 25 U.S.C. 47 and BIA 1480.401(d).

BIA 1480.302 Restrictions on use of the Buy Indian Act.

(a) The authority of the Act and the procedures contained in this part shall not be used to award intergovernmental contracts to tribal organizations to plan, operate or administer authorized Bureau programs (or parts thereof) that are within the legislative and regulatory scope and intent of the Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended. The Buy Indian Act is used by the Bureau solely to award commercial contracts to eligible Indian economic enterprises in meeting Bureau program needs and acquisition requirements for its own operations.

(b) The authority of this Act shall not be used to acquire construction services, as defined in FAR 36.102, except as set forth in BIA 1480.401(b).

Subpart BIA 1480.4—Policy

BIA 1480.401 General.

(a) Except as provided in paragraph (b) of this section, it is the policy of the Department of the Interior to use the Act as authority to give preference to eligible Indian economic enterprises through the use of set-asides when acquiring supplies and services of Indian industry and labor in meeting Bureau needs and requirements.

(b) Construction, as defined in FAR 36.102, shall be acquired pursuant to FAR subparts 6.1 and 6.2 or Public Law 93-638, as amended, as applicable, except that construction of Indian reservation roads (other than those in the State of Oklahoma) may be acquired under the authority of the Act and this part pursuant to 23 U.S.C. 101 and 204(e), as amended, and 41 U.S.C. 252(c)(2), as amended. Indian reservation road construction located in the State of Oklahoma acquired pursuant to the Act is prohibited by court injunction and shall be acquired only by using full and open competition or small business set-asides if required by DIAR 1419.503-70. (*Andrus v. Glover*, 446 U.S. 608 (1980)).

(c) The authority of the Secretary under the Act has been delegated to the Assistant Secretary—Indian Affairs and is exercised by the Bureau in support of its mission and program activities and as a means of fostering Indian employment and economic development.

(d) The authority of the Secretary under the Act may be delegated to a bureau or office within the Department of the Interior other than the Bureau of Indian Affairs only by Secretarial Order pursuant to part 012, chapter 1 of the Departmental Manual (012 DM 1).

(e) The Deputy Commissioner of Indian Affairs, as the head of the contracting activity, shall ensure that all acquisitions made by the Bureau pursuant to the Act are in compliance with the requirements of this part.

BIA 1480.402 Deviations.

(a) Except as provided in paragraphs (b) and (c) of this section, the Deputy Commissioner of Indian Affairs by delegation from the Assistant Secretary—Indian Affairs may approve deviations from the requirements of this part or exceptions to the requirement for use of the Act in Bureau acquisitions when such action is determined to be in

the best interests of the Government. Requests for deviations or exceptions shall be submitted in writing from the contracting officer before the fact by the appropriate Area Office Director to the Bureau Central Office for review. After this review, the request shall be submitted to the Deputy Commissioner of Indian Affairs for approval/disapproval.

(b) The contracting officer may also authorize an exception to use of the Act for an acquisition of the Bureau, when it is determined that:

(1) In accordance with BIA 1480.503(b)(2), there is no reasonable expectation of obtaining quotations from two or more responsible, eligible Indian economic enterprises;

(2) In accordance with BIA 1480.503(b)(3), only one quotation is received from a responsible, eligible small business economic enterprise and the price is unreasonable;

(3) In accordance with BIA 1480.501-1(c), there is no reasonable expectation that offers will be received from two or more responsible, eligible Indian economic enterprises at reasonable prices; or

(4) In accordance with a tribal resolution from the governing body or bodies of the applicable Indian tribe(s) for work on or near its own Indian land, the tribe requests a waiver of the Act authority with sufficient justification.

(c) Other exceptions to use of the Act may be made by the officials specified in, and under the conditions prescribed by, BIA 1480.501-1(f) or BIA 1480.504-2(c).

Subpart BIA 1480.5—Procedures

BIA 1480.501 General.

All acquisitions made under this part, including small purchases, shall conform to all applicable requirements of the FAR and DIAR.

BIA 1480.502 Order of precedence for use of Government supply sources.

Except as required by FAR 8.002, acquisitions made under this part shall be from the sources of supplies and services listed in order of precedence in Attachment 1 of this part, providing the eligible Indian economic enterprise can meet the Bureau specifications and delivery requirements, and the anticipated cost is determined to be reasonable and at a fair market price.

BIA 1480.503 Small purchases.

(a) Subject to the limitations on construction in BIA 1480.401(b), each acquisition of supplies and services that is subject to small purchases procedures under FAR part 13 and DIAR part 1413, shall be set-aside exclusively for eligible

Indian economic enterprises which are also small business concerns under the criteria and size standards of 13 CFR 121. This preference action shall be accomplished by use of Indian small business economic enterprise small purchase set-asides.

(1) Each written quotation or solicitation under an Indian small business economic enterprise—small purchase set-aside shall contain the provision at BIA 1452.280-1, Notice of Indian Small Business Economic Enterprise—Small Purchase Set-Aside. If the solicitation is oral, information substantially identical to that which is in the provision shall be given to potential offerors.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible, eligible Indian economic enterprises which are small business concerns (or at least from one such enterprise, if the purchase does not exceed the dollar threshold described in FAR 13.106(a) for obtaining competition) that will be competitive in terms of market price, quality, and delivery, the contracting officer shall proceed with an unrestricted small business—small purchase set-aside as prescribed in FAR 13.105.

(3) If the contracting officer proceeds with an Indian small business economic enterprise—small purchase set-aside and receives a quotation at a reasonable price from only one such responsible economic enterprise (see FAR 13.106(c)), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonably priced quotation from such an economic enterprise, the contracting officer shall cancel the set-aside and complete the purchase by using an unrestricted small business—small purchase set-aside as prescribed in FAR 13.105.

(4) When proceeding under the circumstances in BIA 1480.503 (b)(2) or (b)(3), the contracting officer shall ascertain the availability of small business suppliers by telephone or other means.

(5) If the purchase is to proceed in accordance with BIA 1480.503 (b)(2) or (b)(3), the contracting officer shall document the reason(s) for such purchase in the file.

(b) The provision at BIA 1452.208-4, Representation Declaration, the clause at DIAR 1452.204-71, Indian Preference—Department of the Interior, and the clause at BIA 1452.280-3, Subcontracting Limitation, shall be included in each solicitation of quotations and resulting purchase order(s).

(c) Small purchases under this section shall conform to the competition and price reasonableness documentation requirements of FAR 13.106 and DIAR 1413.106.

BIA 1480.504 Other than full and open competition.

BIA 1480.504-1 Set-asides for eligible Indian economic enterprises.

(a) Each proposed commercial acquisition for supplies or services that has an anticipated dollar value in excess of the small purchase-threshold amount in FAR part 13 shall be set-aside exclusively for eligible Indian economic enterprises (and referred to as an "Indian Economic Enterprise Set-Aside") when there is a reasonable expectation that offers will be received from two or more responsible enterprises and award will be made at a reasonable price except when:

(1) The acquisition is for construction, other than construction permitted by BIA 1480.401(b);

(2) An exception from use of the Act has been obtained in accordance with BIA 1480.402; or

(3) Use of other than full and open competition has been justified and approved in accordance with BIA 1480.504-2.

(b) When using an Indian economic enterprise set-aside under this section, the contracting officer shall:

(1) Synopsise the acquisition in the Commerce Business Daily (CBD) as required by FAR subpart 5.2 and identify it as an Indian Economic Enterprise Set-Aside;

(2) Insert the clause at BIA 1452.280-2, Notice of Indian Economic Enterprise Set-Aside, in each solicitation of offers and resulting contracts;

(3) Insert the clause at BIA 1452.280-3, Subcontracting Limitation, and the clause at DIAR 1452.204-71, Indian Preference—Department of the Interior, in each written solicitation of quotations or offers and resulting contracts;

(4) Insert the clause at DIAR 1452.204-72, Indian Preference Program, Department of the Interior, in each solicitation and resulting contract where it is determined by the contracting officer, prior to solicitation, that the work will be performed in whole or in part on or near Indian land. Tribal employment preference requirements may be added to the requirements of the clause in accordance with DIAR 1404.7005;

(5) Insert the provision at BIA 1452.280-4, Representation Declaration, in each written solicitation of quotations or offers to obtain a declaration of

eligibility to participate under the Act and this part from each offeror;

(6) Use the Class Justification for Use of Other Than Full and Open Competition in Acquisition of Supplies and Services from Indian Industry (contained in Attachment 2 to this part) to meet the requirements of FAR 6.302-5(c)(2);

(7) By separate memorandum to the file, certify that: (i) The supplies or services to be acquired are available from two or more responsible and eligible Indian economic enterprises; (ii) the anticipated cost to the Bureau of the required supplies or services is determined to be reasonable; and (iii) the information in the Class Justification for Use of Other Than Full and Open Competition in Acquisition of Supplies and Services from Indian Industry in Attachment 2 to this part is accurate and complete as it pertains to the proposed acquisition;

(8) Solicit bids using sealed bidding procedures in accordance with FAR part 14 whenever the conditions in FAR 6.401(a) are met. If the conditions in FAR 6.401(a) are not met, competitive proposals shall be solicited in accordance with FAR part 15;

(9) Reject offers which fail to include the provision at BIA 1452.280-4. The contracting officer may also request (as part of a normal pre-award audit) the Office of the Inspector General (OIG) to: (i) Assist in determining the bona fide status of the low responsive and responsible offeror on Act contracts; and (ii) determine whether the work will be performed by the labor force required under BIA 1480.602. Such requests to the OIG should be made on the standard audit request form, DI-1902, as required by DIAR 1415.805-5;

(10) When using sealed bidding, determine that the price offered by the prospective contractor is reasonable and at a fair market price as required by FAR 14.407-2 before awarding a contract;

(11) When using competitive proposals, solicit proposals in accordance with FAR subpart 15.4 and select sources in accordance with FAR subpart 15.6 and DIAR subpart 1415.6;

(12) When using competitive proposals or when negotiating modifications which impact the cost of a contract: (i) conduct proposal analysis including cost or price analysis in accordance with FAR subpart 15.8; (ii) negotiate profit or fee in accordance with the procedures in FAR subpart 15.9 and DIAR subpart 1415.8; and (iii) prepare a negotiation memorandum in accordance with FAR 15.808 and DIAR 1415.808;

(13) When acquiring architect-engineer services, solicit proposals and evaluate potential contractors in accordance with FAR part 36 and DIAR subpart 1436.6; and

(14) When acquiring services to be performed in whole or in part on Indian land, give written notice to the governing body or bodies of the applicable Indian tribe or tribes. The notice shall be provided simultaneously with publication of the synopsis required by subparagraph (b)(1) of this section with information to the Tribe(s) of the Bureau's intent to contract if there are Indian economic enterprises which are eligible, interested, responsive and responsible, and the award can be made at a reasonable price. If the tribe does not oppose the set-aside intention or advise the Bureau of its intent to contract for the program within 15 calendar days from the date of publication in the Commerce Business Daily of the solicitation notice, the Bureau will proceed with the solicitation in accordance with FAR 5.203.

(c) When the contracting officer determines that there is no reasonable expectation that offers will be received from two or more responsible, eligible Indian economic enterprises and award cannot be made at a reasonable and fair market price, the basis for such a determination shall be documented in writing by the contracting officer and placed in the contract file. The contracting officer shall proceed with the acquisition using the sources identified in Attachment 1 to this part as listed in order of precedence.

(d) If an interested Indian economic enterprise is identified after a market survey has been performed and a solicitation has been issued (which is not restricted to participation of Indian economic enterprises) but prior to the date established for receipt of offers, the contracting officer shall provide a copy of the solicitation to this enterprise. In such cases, preference under the Act will not be given to the Indian economic enterprise. Under these conditions, the contracting officer may extend the date for receipt of offers when such action is determined to be practicable.

(e) When only one offer is received from a responsible, eligible Indian economic enterprise at a reasonable and fair market price in response to an acquisition set-aside under paragraph (a) of this subsection, the contracting officer shall: (1) Make an award to that enterprise; (2) document the reason only one offer was received; (3) and initiate action to increase competition in future solicitations as required by FAR 14.407-1(b).

(f) In response to an acquisition set-aside under BIA 1480.504-1(a), when using sealed bid procedures, and when all otherwise acceptable bids received from responsible, eligible Indian economic enterprises are at unreasonable prices; or when only one bid is received from such an enterprise and the contracting officer determines the price to be unreasonable; or when no responsive bids have been received from such enterprises, the chief of the contracting office shall cancel the solicitation and reject all bids pursuant to a written determination in accordance with FAR 14.404-1(c). After notice of rejection to all bidders has been made pursuant to FAR 14.404-3, completion of the acquisition shall be made:

(1) Using negotiation (see FAR 14.404-1(e)(1) and 15.103), provided the contracting officer has determined by the written determination required by FAR 14.404-1(e) that completion through use of negotiation is authorized and approval has been obtained as required by DIAR 1414.404-1; or

(2) Using a new solicitation and the sources identified in Attachment 1 to this part, as listed in order of precedence if the use of negotiation is not authorized in the written determination required by FAR 14.404-1(c) and DIAR 1414.404-1.

(g) In response to a set-aside acquisition, when using competitive proposals, proposals may be rejected pursuant to a written determination by the chief of the contracting office under the conditions set forth in FAR 15.608(b) and DIAR 1415.608.

BIA 1480.504-2 Other circumstances for use of other than full and open competition.

(a) Other circumstances may exist with regard to fulfilling an acquisition requirement of the Bureau where the use of an Indian economic enterprise set-aside under BIA 1480.504-1(a) and FAR 6.302-5 is not feasible. In such situations, the requirements of FAR subparts 6.3 and 6.4 and DIAR subparts 1406.2 and 1406.3 shall be applicable in justifying the use of appropriate authority for other than full and open competition.

(b) Except as provided in FAR 5.202, all proposed acquisition actions under this subsection and FAR subpart 6.3 shall be synopsized first in the Commerce Business Daily (CBD) in accordance with the requirements of FAR 5.207 and DIAR 1405.207.

(c) Justifications for use other than full and open competition (other than the Class Justification in Attachment 2 to this part) under this section shall be

approved for a proposed contract, or for a modification increasing the scope of an existing contract, by:

(1) A supervisory contract specialist (Level IV Warrant holder) when the anticipated dollar value of the action is not over \$25,000;

(2) The Chief, Division of Contracting and Grants Administration (Central Office) when the anticipated dollar value of the action is over \$25,000 and less than \$100,000;

(3) The Bureau Competition Advocate (Central Office) when the anticipated dollar value of the action is over \$100,000 but does not exceed \$1,000,000;

(4) The Deputy Commissioner of Indian Affairs when the anticipated dollar value of the action is over \$1,000,000 but does not exceed \$10,000,000; and

(5) The Director, Office of Acquisition and Property Management, Office of the Secretary, when the dollar value of the action is over—\$10,000,000.

BIA 1480.505 Debarment and suspension.

Violation of the regulations in this part by an offeror or an awardee may be cause for debarment or suspension in accordance with FAR 9.406-2(b)(1) and 9.407-2(a)(3). Recommendations for debarment or suspension shall be referred to the Director, Office of Acquisition and Property Management, Department of the Interior, pursuant to DIAR 1409.406-3 and 1409.407-3 through the Division of Contracting and Grants Administration (Central Office) and concurred in by the Deputy Commissioner of Indian Affairs.

Subpart BIA 1480.6—Contract Requirements

BIA 1480.601 Indian preference.

(a) Solicitations of quotations or offers and resulting contracts awarded pursuant to the Act shall include the clause at DIAR 1452.204-71, Indian Preference—Department of the Interior (see BIA 1480.503(c) and BIA 1480.504-1(b)(3)).

(b) Solicitations of offers and resulting contracts, exceeding \$50,000 shall include the clause at DIAR 1452.204-72, Indian Preference Program—Department of the Interior (see BIA 1480.504-1(b)(4)) where it is determined by the contracting officer (in advance of the solicitation) that the work under the contract will be performed in whole or in part on or near Indian land.

BIA 1480.602 Subcontracting limitations.

(a) In contracts awarded pursuant to this part, the eligible Indian economic enterprise (the concern) must agree to

the following limitations in performance of the contract for:

(1) Services (except construction)—at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern;

(2) Supplies (other than procurement from a regular dealer in such supplies)—the concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) General construction—the concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees; and

(4) Construction by special trade contractors—the concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees pursuant to FAR 52.219-14(d) Construction by special trade contractors.

(b) The contracting officer shall insert the clause at BIA 1452.280-3, Subcontracting Limitation, in all purchase orders and contracts for services, supplies, or construction authorized by BIA 1480.401(b) awarded to eligible Indian economic enterprises pursuant to this part.

BIA 1480.603 Performance and payment bonds.

Solicitations requiring performance and payment bonds shall contain the information required by FAR 28.102-3 and authorize use of any of the types of security acceptable under FAR subpart 28.2. Pursuant to 25 U.S.C. 47a, the contracting officer may accept alternative forms of security in lieu of performance and payment bonds required by FAR 28.102, if a determination is made that such forms of security provide the Government with adequate security for performance and payment.

Subpart BIA 1480.7—Contract Administration

BIA 1480.701 Contract administration requirements.

The contracting officer and the contracting officer's representative (see DIAR 1401.670) shall monitor performance and progress to ensure contractor compliance with part 42 of the FAR. Attention shall be directed also to ensure contractor compliance with the following provisions of this part:

(a) Maintenance of the minimum 51% ownership and daily management criterion requirement of subparagraph

(b)(1) of the clause at BIA 1452.280-2; and

(b) Maintenance of the limitations required by the clause at BIA 1452.280-3 when acquiring services, supplies, and construction authorized under BIA 1480.401(b); and

(c) Implementation and enforcement of Indian preference requirements contained in DIAR 1404.7003, as prescribed by BIA 1480.601.

Subpart BIA 1480.8—Representation by an Indian Economic Enterprise Offeror

BIA 1480.801 General.

(a) The contracting officer shall insert the provision at BIA 1452.280-4, Representation Declaration, in all solicitations regardless of dollar value, set-aside for Indian economic enterprises under this part.

(b) To be considered for an award under an acquisition set-aside under BIA 1480.503 or BIA 1480.504-1, an offeror must provide the Representation Declaration provision at BIA 1452.280-4. An offeror must represent that it meets both the definitions of *Indian* and *Indian economic enterprise* (as defined in BIA 1480.201) and only in response to a specific solicitation set-aside under the Act and this part. These requirements must exist: when an offer is made in response to a solicitation; at the time of contract award and during the full term of the contract. If a contractor no longer meets the eligibility requirements after award, the contractor shall provide immediate written notification to the contracting officer. Failure to provide immediate written notification to the contracting officer shall render the economic enterprise ineligible for future contract awards under this part, and the Bureau may consider termination for default if it is determined to be in the best interest of the government.

(c) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is an eligible Indian economic enterprise unless another interested party challenges the economic enterprise representation or the contracting officer has reason to question the representation. Challenges of and questions concerning a specific Representation Declaration shall be referred to the contracting officer or chief of the contracting office in accordance with BIA subpart 1480.9.

(d) The contracting officer shall maintain files compiled from submissions by eligible Indian economic enterprises of the Solicitation Mailing List Application (SF-129); the SF-254 and SF-255, as applicable; and, the

Representation Declaration provision in BIA 1480.280-4.

BIA 1480.802 Representation declaration provision.

(a) The Representation Declaration provision shall be available from all Bureau contracting offices.

(b) The submission of a Solicitation Mailing List Application (or SF-254 and SF-255 for Architect-Engineer services, when applicable) by an eligible Indian economic enterprise does not remove the requirement for it to submit the completed Representation Declaration provision also required by this part if it wishes to be considered as an offeror for a specific solicitation. Contracting officers may determine the validity of the contents of the applicant's declaration.

(c) Any false or misleading information submitted by an economic enterprise when submitting an offer in consideration for an award set-aside under the Act is a violation of the law punishable under 18 U.S.C. 1001. False claims submitted as part of contract performance under the Act authority are subject to the penalties of 31 U.S.C. 3729-3731 and 18 U.S.C. 287.

BIA 1480.803 Declaration process.

(a) It is the policy of the Bureau that only eligible Indian economic enterprises are to participate in acquisitions set-aside under the Act and this part. The Bureau procedure supports responsible Indian economic enterprises and seeks to prevent circumvention or abuse of the Act.

(b) Eligibility is based on information furnished by the economic enterprise to a Bureau contracting officer on the Representation Declaration provision at BIA 1452.280-4 in response to a specific solicitation under the Act. Offerors must submit their completed Declaration provisions to the bureau contracting office issuing the specific solicitation.

(c) The eligibility declaration remains in effect until:

- (1) Voluntarily surrendered;
- (2) Revoked for cause if the offeror or contractor information was falsified;
- (3) The circumstances of the economic enterprise change so that it is no longer an eligible entity; or

(4) A contractor has been debarred or suspended or proposed for debarment, or otherwise declared ineligible.

(d) Declarations from economic enterprises may be reviewed by the appropriate Regional Solicitor when the contracting officer believes such review is necessary.

(e) Representation declaration of an Indian economic enterprise does not relieve the contracting officer of the

obligation for determining contractor responsibility, as required by FAR subpart 9.1.

Subpart BIA 1480.9—Protests of Representation Declaration

BIA 1480.901 General.

(a) The contracting officer shall accept an offeror's written representation declaration of being an eligible Indian economic enterprise (as defined in BIA 1480.201) only when it is submitted with an offer in response to a specific solicitation under the Act. Another interested party may challenge the representation declaration status of an offeror or contractor by filing a written protest to the applicable contracting officer in accordance with the procedures in BIA 1480.902.

(b) After receipt of offers, the contracting officer may question the eligibility declaration of any offeror in a specific offer by filing a formal objection with the chief of the contracting office.

BIA 1480.902 Receipt of protest.

(a) Protests against the Representation Declaration of an offeror, from any interested party, whether timely, in accordance with paragraph (c) of this section, or not, shall be filed with the contracting officer of the location.

(b) The protest shall be in writing and shall contain the basis for the protest with accurate, complete, specific and detailed evidence to support the allegation that the offeror is neither eligible nor does not meet both the definitions of *Indian* and of *Indian economic enterprise* cited in BIA 1480.201. The contracting officer will dismiss any protest that is deemed frivolous or that does not meet the conditions in this section.

(c) To be considered timely, a protest must be received by the contracting officer not later than 10 days after the basis of protest is known or should have been known, whichever is earlier.

(1) A protest may be made orally if it is confirmed in writing within the ten-day period after the basis of protest is known or should have been known, whichever is earlier.

(2) A protest may be made in writing if it is delivered by hand, telefax, telegram, or letter postmarked within the ten-day period after the basis of protest is known or should have been known, whichever is earlier.

(3) A contracting officer's objection is always considered timely, whether filed before or after award.

(d) Upon receiving a timely protest, the contracting officer shall:

(1) Notify the protestor of the date it was received, and that the representation declaration of the economic enterprise being challenged is under consideration by the Bureau; and

(2) Furnish to the economic enterprise whose representation declaration is being challenged a request to provide detailed information on its eligibility by certified mail, return receipt requested.

(e) Within three days after receiving a copy of the protest and the Bureau's request for detailed information, the challenged offeror must file with the contracting officer a completed statement answering the allegations in the protest, and furnish evidence to support its position on representation. If the offeror does not submit the required material within the three days, or another period of time granted by the contracting officer, the Bureau may assume that the offeror does not intend to challenge the protest and the Bureau shall not award to the challenged offeror.

(f) Within ten days after receiving a protest, the challenged offeror's response and other pertinent information, the contracting officer shall determine the representation declaration status of the challenged business concern and notify the protestor and the challenged offeror of the decision by certified mail, return receipt requested, and make known the option to appeal the determination to the Division of Contracting and Grants Administration (Central Office).

(g) If the declaration accompanying an offer is challenged and subsequently upheld by the Bureau Central Office, the written notification of this Bureau action shall state the reason(s). The Bureau Central Office may review the economic enterprise for possible suspension or debarment recommendations.

BIA 1480.903 Award in the face of protest.

(a) Award of a contract in the face of protest may be made on the basis of the written determination by the contracting officer. This determination is final for the Bureau unless it is appealed to the Bureau Central Office, and the contracting officer is notified of the appeal before award. If an award was made before the time the contracting officer received notice of appeal, the contract shall be presumed to be valid.

(b) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until the contracting officer has determined the validity of the representation, or ten days have expired since the contracting officer received the protest, whichever occurs first.

However, an award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest, or the supplies and services are urgently required, or a prompt award will otherwise be advantageous to the Government.

(c) If a timely protest of a representation declaration is filed with the contracting officer and received before award in response to a specific offer and solicitation, the contracting officer shall provide a notice to eligible offerors within one day that the award will be withheld and a time extension for acceptance is requested.

(d) If a protest of a representation declaration is filed with the contracting officer and received after award in response to a specific offer and solicitation, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay would prejudice the Government's interest. However, if contract performance is to be suspended, a mutual no-cost agreement will be sought.

BIA 1480.904 Protest not timely.

In the event of a protest of representation declaration which is not timely, the contracting officer shall notify the protestor that the protest cannot be considered on the instant acquisition but has been referred for consideration in any future actions. However, the contracting officer may question at any time, before or after award, the representation declaration status of a self-declared Indian economic enterprise.

ATTACHMENT 1.—SET-ASIDE PROGRAM ORDER OF PRECEDENCE

Source preference	Reference (48 CFR)
Supplies:	
1. Indian economic enterprise set-aside under the Buy Indian Act.	Sections 8.001(a) and BIA 1480.503 and 504.
2. Bureau of Indian Affairs inventories or excess from Federal agencies.	Subpart 8.1.
3. Federal Prison Industries, Inc.	Subpart 8.6.
4. Purchase from the Blind and Other Severely Handicapped.	Subpart 8.7.
5. Wholesale Supply Sources (Stock Programs and Inventory Control Points such as GSA, VA and DOD depots).	41 CFR 101-26.3, 26.6 and 26.704.
6. Mandatory Federal Supply Schedules.	Subpart 8.4.

ATTACHMENT 1.—SET-ASIDE PROGRAM ORDER OF PRECEDENCE—Continued

Source preference	Reference (48 CFR)
7. Optional Use Federal Supply Schedules.	Subpart 8.4.
8. Contracts under Section 8(a) of the Small Business Act.	Subpart 19.8.
9. Small Business—Small Purchase Set-Aside.	Sections 13.105 and DIAR 1413.103.
10. Total Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
11. Total Set-aside for Small Business concerns.	Section 19.504.
12. Partial Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
13. Partial Set-aside for Small Business concerns.	Section 19.504.
14. Total Labor Surplus Area Set-aside for concerns that are not Small Businesses.	Section 19.504.
15. Other Commercial Sources (including educational and nonprofit institutions).	Subpart 6.1.
Services:	
1. Indian economic enterprise set-aside under the Buy Indian Act, including Indian roads and bridges.	Sections 8.001(a) and BIA 1480.402 and 403; 23 U.S.C. 204(e), and 41 U.S.C. 252(c)(2), as amended.
2. Purchase from the Blind and Other Severely Handicapped.	Subpart 8.7.
3. Mandatory Federal Supply Schedules.	Subpart 8.4.
4. Optional Use Federal Supply Schedules.	Subpart 8.4.
5. Federal Prison Industries, Inc.	Subpart 8.6.
6. Contracts under Section 8(a) of the Small Business Act.	Subpart 19.8.
7. Small Business—Small Purchase Set-Aside.	Sections 13.105 and DIAR 1413.103.
8. Total Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
9. Total Set-aside for Small Business concerns.	Section 19.504.
10. Partial Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
11. Partial Set-aside for Small Business concerns.	Section 19.504.
12. Total Labor Surplus Area Set-aside for concerns that are not Small Businesses.	Section 19.504.
13. Other Commercial Sources (including educational and nonprofit institutions).	Subpart 6.1.

Attachment 2

Department of the Interior, Bureau of Indian Affairs, Class Justification, For Use of Other Than Full and Open Competition in Acquisition of Supplies and Services From Indian Industry

1. Identity of agency, contracting activity, document, and statutory authority.

The Bureau of Indian Affairs (BIA) may use this Class Justification for other than full and open competition to acquire products and services of Indian industry pursuant to 25 U.S.C. 47, as amended. The statutory authority permitting use of other than full and open competition for acquisitions made pursuant to the Buy Indian Act is 41 U.S.C. 253(c)(5). In addition, the BIA is publishing an interim rule to govern implementation of section 23 of the Act of June 25, 1910, referred to as the "Buy Indian Act" and codified as 25 U.S.C. 47 as amended, and the implementing regulations of 48 CFR, chapter 14, appendix A, part 1480. The interim rule supports the policy and describes the BIA's procedures in its commercial acquisition relationships with self-certified, eligible Indian economic enterprises.

Further, section 7(b) of Public Law 93-638, as implemented by DIAR 1452.20-71, applies an Indian preference requirement for employment and subcontracting opportunities under contracts for the benefit of Indians, or contracts made pursuant to statutes authorizing contracts with Indians. The Class Justification for use of other than full and open competition in the acquisition of supplies, services, and construction, as defined in BIA 1480.401(b), from Indian industry meets the requirements of FAR 6.302-5(c)(2).

2. Nature and description of the action/acquisition/requirement.

BIA may solicit offers and award contracts to eligible Indian economic enterprises to the exclusion of non-eligible offerors, in support of its mission and program activities. Contract awards with an estimated individual value up to \$10 million may be for supplies, services, or construction as defined in BIA 1480.401(b), from self-certified, eligible Indian economic enterprises either through their own labor, skills, or efforts, or provided as regular dealers. BIA's policy is to give preference to eligible Indian economic enterprises through the use of set-asides in acquisitions to meet the Bureau's needs, as a means of fostering economic development and employment for Indian persons.

3. Description of efforts to ensure solicitation/offers from maximum number of sources practicable; determination of fair and reasonable cost; description of market survey to be conducted; statement of action to be taken to remove or overcome barriers to full and open competition.

The contracting officer shall certify, by separate memorandum, that the supplies, services, or construction to be acquired are available from two or more responsible, responsive, eligible Indian economic enterprises, and that the anticipated cost to BIA of the required supplies or services is determined to be fair and reasonable.

BIA will adhere to the Small Business Act Requirements for small purchases, while

continuing its policy of utilizing the Buy Indian Act. When the contracting officer is unable to determine in advance a potential award as an Indian small business set-aside, BIA is required to follow the order of preference in FAR 8.001. If an award is not or cannot be made to an eligible Indian firm that is responsible, responsive, and its price reasonable to BIA's solicitation, the set-aside notice will be cancelled. BIA shall then consider other authorized procurement set-aside programs before full and open competition.

The contracting officer may seek sealed bids or competitive proposals, as appropriate, and select sources in accordance with FAR. In response to an acquisition set-aside, when using sealed bid procedures, and when all otherwise acceptable bids received from responsible, eligible Indian economic enterprises are at unreasonable prices, or, when only one bid is received from such an enterprise and the contracting officer cannot determine the reasonableness of the bid price, or, when no responsive bids have been received from such enterprises, the contracting officer shall cancel the solicitation and reject all bids pursuant to a written determination. Completion of the acquisition shall be made either using negotiation or a new solicitation in accordance with FAR.

When only one offer is received from a responsible, eligible Indian economic enterprise at a reasonable and fair market price in response to an acquisition set-aside, the contracting officer shall make an award to that enterprise. However, the contracting officer shall then initiate action to increase competition in future solicitations as required by FAR.

4. Other facts supporting justification:

This class justification ensures that supplies, services, and construction, as defined in BIA 1480.401(b), procured for the benefit of Indians will be used to the maximum extent feasible to promote Indian employment and business development. This justification additionally supports BIA's policy in Indian preference requirement for employment and subcontracting opportunities under contracts for the benefit of Indians, or contracts made pursuant to statutes authorizing contracts with Indians. Through this class justification, BIA is, therefore, encouraging major initiatives for the economic development and employment of Indian persons.

5. Certification that justification is accurate and complete.

The contracting officer shall certify, by separate memorandum, that the information in this Class Justification is accurate and complete as it pertains to the proposed acquisition.

Approval

Based on the justification above, it is determined that it is in the Government's interest to permit set-aside acquisitions to eligible Indian economic enterprises. This Class Justification is made in accordance with FAR Subpart 6.3 and is approved pursuant to Section 303(f)(1)(B) of the Federal Property and Administrative Services Act of 1949, as amended, and 41 U.S.C. 253(f). I certify that this justification is accurate and complete to the best of my knowledge. The expiration date of this justification is December 31, 2001.

Dated: January 4, 1991.

Anthony Howard,

Chief, Division of Contracting and Grants Administration.

Anthony Howard,

Bureau Competition Advocate.

Patrick A. Hayes,

Acting Deputy Commissioner of Indian Affairs.

Dated: May 1, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

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